

Nguyen (Migration) [2019] AATA 5712 (2 December 2019)

DECISION RECORD

DIVISION:	Migration & Refugee Division
REVIEW APPLICANT:	Mr Tam Nguyen
VISA APPLICANT:	Ms Thi Be Nguyen
CASE NUMBER:	1717351
DIBP REFERENCE(S):	OSF2016038528
MEMBER:	M. Edgoose
DATE:	2 December 2019
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal remits the application for a Prospective Marriage (Temporary) (Class TO) visa for reconsideration, with the direction that the visa applicant meets the following criteria for a Subclass 300 (Prospective Marriage) visa: • cl.300.221 of Schedule 2 to the Regulations

Statement made on 02 December 2019 at 1:37pm

CATCHWORDS

MIGRATION – Prospective Marriage (Temporary) (Class TO) visa – Subclass 300 (Prospective Marriage) – genuine intention to live together as spouses – joint responsibility for young daughter – social recognition of relationship – companionship and emotional support – decision under review remitted

1.

LEGISLATION

Migration Act 1958 (Cth), s 65

Migration Regulations 1994 (Cth), Schedule 2, cls 300.215, 300.216, 300.221

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

2. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the visa applicant a Prospective Marriage (Temporary) (Class TO) visa under s.65 of the *Migration Act 1958* (the Act).
3. The visa applicant applied for the visa on 15 September 2016. At the time the visa application was lodged, Class TO contained only one subclass: Subclass 300 (Prospective Marriage). The criteria for a Subclass 300 visa are set out in Part 300 of Schedule 2 to the Migration Regulations 1994 (the Regulations).
4. The delegate refused to grant the visa on 29 June 2017 on the basis that the visa applicant did not satisfy cl.300.215, cl.300.216 and cl.300.221 of Schedule 2 to the Regulations.
5. The review applicant was represented in relation to the review by his registered migration agent.
6. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

CONSIDERATION OF CLAIMS AND EVIDENCE

7. The issue in the present case is whether Ms Thi Be Nguyen the visa applicant and the sponsor Mr Tam Nguyen genuinely intend to live together as spouses and that they are in a genuine relationship, both at the time of application and at the time of this decision.

Do the parties continue to meet time of application requirements?

8. Clause 300.221 requires that at the time of decision, the visa applicant continues to satisfy the criteria in cl.300.211, 300.214, 300.215 and 300.216. That is, that visa applicant intends to marry an Australian citizen, permanent resident or eligible New Zealand citizen; that the parties have met and are known to each other personally; that the parties genuinely intend to marry and intend to do so during the visa period; and that the parties genuinely intend to live together as spouses. Accordingly, cl.300.221 is met.
9. The review submitted to the Tribunal an intention to marry letter dated 7 November 2019 (AAT Folio 283). The review applicant and visa applicant intend to marry on 18 April 2020 at 5:00pm at 14 Church Street Abbotsford. The marriage celebrant for this ceremony will be Thuc Nguyen, a Civil Marriage Celebrant. Accordingly, cl.300.215 is met.

10. Financial aspects of the relationship

11. The Tribunal finds no evidence that the couple have committed to joint ownership of real estate or other major assets, or that they have assumed any joint liabilities. The Tribunal finds no evidence that either party owes any legal obligation in respect of the other. Given the constraints of residing in separate countries however, the Tribunal gives little weight to the consideration of the financial aspects of the relationship.

12. Nature of the household

13. On consideration of the limited evidence, the Tribunal therefore finds no evidence of the sharing of responsibility for housework. The review applicant submitted DNA evidence to the

Tribunal (AAT Folio 281) that the review and visa applicant have joint responsibility for the care and support of a young daughter. Given the constraints of residing in separate countries however, the Tribunal accords little weight to the consideration of the nature of the parties' household in this case.

14. Social aspects of the relationship

15. The Tribunal acknowledges the two Form 888 Statutory Declarations at were submitted to the Department, a range of affidavits from your family and relatives, and the range of photos submitted to the Department and Tribunal.
16. On the basis of the evidence, the Tribunal finds that the parties represent themselves to others as being in a genuine and continuing relationship, and that the couple plan and undertake joint social activities. The Tribunal finds that the relationship is viewed as genuine and continuing in the opinion of the couple's family members, friends and acquaintances.

17. Nature of the person's commitment to each other

18. The Tribunal is satisfied that the couple have known each other for a number of years. The couple draw a degree of companionship and emotional support from each other through having lived together for periods of time and the evidence provided regarding regular telephone contact between the couple and their daughter. The Tribunal is satisfied that the couple are in a genuine and continuing relationship.
19. The Tribunal notes that the review applicant's previous wife has the same name as the visa applicant.
20. Given the findings above, the appropriate course is to remit the application for the visa to the Minister to consider the remaining criteria for a Subclass 300 visa.

DECISION

21. The Tribunal remits the application for a Prospective Marriage (Temporary) (Class TO) visa for reconsideration, with the direction that the visa applicant meets the following criteria for a Subclass 300 (Prospective Marriage) visa:
- cl.300.221 of Schedule 2 to the Regulations

M. Edgoose
Member